ORIGINAL

Supreme Court, U.S.
FILED
OCT 23 1991
OFFICE OF THE CLERK

RESPONSE REQUESTED

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No. 91-153

STATE OF MARYLAND,

Petitioner

v.

LENARD BERNARD OWENS,

Respondent

BRIEF IN OPPOSITION TO

PETITION FOR WRIT OF CERTIORARI

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Lenard Bernard Owens, who is indigent and who has been found to meet the qualifications for representation by the Office of the Public Defender for the State of Maryland, asks leave to file the attached Brief in Opposition to the State of Maryland's Petition for Writ of Certiorari to the Court of Appeals of Maryland without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

RECEIVED
HAND DELIVERED
OCT 23 1991
OFFICE OF THE CLERK
SUPREME COURT, U.S.

The Respondent's Affidavit in support of this Motion is attached hereto.

Bradford C. Peabody

Bradford C. Peabody
Assistant Public Defender
Appellate Division
201 Saint Paul Place
Baltimore, Maryland 21202
(301) 333-4829

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 23RD day of October, 1991, a copy of the foregoing Motion for Leave to Proceed in Forma Pauperis and Brief in Opposition to Petition for Writ of Certiorari was delivered to Gary E. Bair, Assistant Attorney General, 200 Saint Paul Place, Baltimore, Maryland 21202.

Bradford C. Peabody

Bradford C. Peabody
Assistant Public Defender

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

NO.

STATE OF MARYLAND,

Petitioner

v.

LENARD BERNARD OWENS,

Respondent

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Lenard Bernard Owens, being duly sworn, depose and say that I am the Respondent in the above entitled case, that I am unable to pay the costs of said proceeding, and that I believe I am entitled to proceed in forma pauperis.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

N/O

(a) If the answer is *yes*, state the amount of your salary or wages per month and give the name and address of your employer.

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

NOV 1987 $800 month

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment or in the form of rent payments, interest, dividends, or other source?

NO

(a) If the answer is *yes*, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or saving accounts? NO

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

NO

(a) If the answer is *yes*, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

NONE

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Lenard B Owens
Lenard Bernard Owens

Subscribed and sworn to before me, a Notary Public this 11th day of June, 1991.

Cathy A Wisherd
NOTARY PUBLIC

My Commission Expires: 7-1-95

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefore.

_____
JUSTICE

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No. 91-153

STATE OF MARYLAND,

Petitioner

v.

LENARD BERNARD OWENS,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Stephen E. Harris
Public Defender

Bradford C. Peabody*
Assistant Public Defender

Office of the Public Defender
Appellate Division
201 Saint Paul Place
Baltimore, Maryland 21202
(301) 333-4829

Counsel for Respondent

*Counsel of Record

RECEIVED
HAND DELIVERED

OCT 23 1991

OFFICE OF THE CLERK
SUPREME COURT, U.S.

INDEX

TABLE OF CONTENTS

Page

QUESION PRESENTED iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 3

CONCLUSION 11

TABLE OF CITATIONS

Cases

Arkansas v. Sanders, 442 U.S. 753 (1979) 4, 5

California v. Acevedo, U.S. , 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991) 3, 4

Commonwealth v. Silo, 389 A.2d 62 (1978) 7

Connecticut v. Mooney, 558 A.2d 145 (Conn. 1991) 5

Corngold v. United States, 367 F.2d 1 (9th Cir. 1966) 7, 9

Frazier v. Cupp, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) 6

In re Scott K., 595 P.2d 105 (Cal. 1979) 6, 9

Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) 11

Matter of B.K.C., 413 A.2d 894 (D.C. Cir. 1980) 9

Minnesota v. Olson, 495 U.S. , 109 L.Ed.2d 85 (1990) 10

Owens v. State, 83 Md. App. 353, 370, 574 A.2d 362 (1990) 2, 8, 11

Owens v. State, 322 Md. 616, 589 A.2d 59 (1991) 3, 4

Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980) 10, 11

State v. Cooke, 282 S.E.2d 800, (N.C.App. 1981), *aff'd* 291 S.E.2d 618 (N.C.1982) 9, 11

State v. Evans, 372 P.2d 365 (Ha. 1962) 6

State v. Pinegar, 583 S.W.2d 217 (Mo. App. 1979) 6, 11

Stoner v. California, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964) 6, 7

Thompson v. State, 62 Md. App. 190, 488 A.2d 995 (1985) 10

United States v. Block, 590 F.2d 535 (4th Cir. 1978) 5, 7

United States v. Chadwick, 433 U.S. 1 (1977) 5

United States v. Fernandez, 772 F.2d 495 (9th Cir. 1985) 7, 8, 11

United States v. Impink, 728 F.2d 1228 (9th Cir. 1984) 6

United States v. Piet, 498 F.2d 178 (7th Cir. 1974) 7

United States v. Prescott, 480 F.Supp. 554, (W.D.Pa. 1979) 9

United States v. Wilson, 536 F.2d 883 (9th Cir. 1976) 8, 9

Miscellaneous

Wayne R. LaFave, *Search and Seizure* (1987 ed.) 5, 7, 9

QUESTION PRESENTED

Has the Fourth Amendment been violated where the police, relying solely on the consent of the resident of an apartment, search closed luggage which the police believe belongs to a traveler who just arrived with contraband?

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No. 91-153

STATE OF MARYLAND,

Petitioner

v.

LENARD BERNARD OWENS,

Respondent

BRIEF IN OPPOSITION TO

PETITION FOR WRIT OF CERTIORARI

The Respondent, Leonard Bernard Owens, by his attorney Bradford C. Peabody, Assistant Public Defender, requests that the Petition for Writ of Certiorari be denied.

STATEMENT OF THE CASE

The following facts and quotations are taken from the Joint Record Extract filed in the Court of Appeals of Maryland.

Hearing

At the pretrial suppression hearing, Respondent testified that, on February 1, 1988, he was visiting Hagerstown, Maryland from his home in Florida, when he left his only piece of luggage in the living room of a friend named Marla Gardin, after spending the night there. (E.2-7). She had no permission to open his luggage. (E.4,6). Respondent intended to return and retrieve the bag, later. (E.5).

Marla Gardin testified for the State that Respondent had stayed the night, at her house, on previous occasions. (E.12-17). But on the date in question, February 1, 1988, Respondent and other men had just arrived from Florida. (E.16-17). Respondent "said they just wanted to leave their bags and they would be back to get it, they was going to look for a room or something." (E.17-18). She "gave them permission to leave their bags there." (E.20). No one gave her permission to open the bags. (E.20). Respondent's bag was "closed the entire time." (E.20).

Hagerstown Police Detective Nelson M. Sheppard also testified for the State, at the hearing, that on February 1, 1988, he went to Gardin's apartment and "indicated to her that [he] had received information that there were drugs in her apartment that was brought there by four subjects who just arrived that morning." (E.23). Gardin signed a consent to search form, and "[a]fter she signed the consent form, she pointed to some luggage which was located on the southwest corner of the living room and she stated 'they had just brought it here this morning and if there's any drugs it would be in there.'" (E.24-25). The zippered bag in question was closed and had Respondent's name tag on the "outside." (E.11, 28-29).

The trial court ruled that, under these facts, Respondent had neither standing to contest the search nor a reasonable expectation of privacy in his own luggage. (E.45-50). The trial court called it "a gratuitous bailment," (E.47), adding:

> "[T]he fact that these defendants, who apparently come up here from Florida and flop their suitcases down in Miss Gardin's apartment without any arrangement whatsoever, they have no interest in that apartment, no proprietary interest whatsoever, and they flop their suitcases in there and then just go off, intending to return hours or days later, does not give them any Fourth Amendment right to challenge the search of her apartment." (E.47).

The Court of Special Appeals agreed with the trial court, *Owens v. State*, 83 Md. App. 353, 370, 574 A.2d 362 (1990):

> "We hold that a third-party gratuitous bailee of a container may give valid consent to police to search that container where the bailee is in a position to deny the owner of the item physical access to it, and where the bailee is in an inculpatory position as a result of the bailment. Under these circumstances, the owner of the item has relinquished control

> over the item to a sufficient degree to undermine his or her expectation of privacy in the item. With the expectation of privacy eroded, the owner has no valid Fourth Amendment search and seizure complaint regarding the legality of the search of the item.
>
> Were we to hold otherwise, sophisticated couriers of contraband might soon avail themselves of the following scenario as a means of avoiding prosecution for these offenses: The courier engages a third-party to take control of the contraband. The third-party, if accosted, then consents to a search in order to exculpate himself or herself, but denies ownership of the item. The true owner of the item then has the evidence suppressed, based upon a violation of his or her own expectation of privacy.
>
> We hold that under the total atmosphere of this case, whatever subjective expectation of privacy appellant retained in the bag was objectively unreasonable. Accordingly, we affirm."

The Court of Appeals of Maryland reversed, *Owens v. State*, 322 Md. 616, 589 A.2d 59 (1991), concluding: (1) that Owens had a reasonable expectation of privacy in his luggage; (2) that the warrantless seizure of the bag was lawful; but (3) that the warrantless search of the bag was not lawful.

REASONS FOR DENYING THE WRIT

Before reaching the issue raised by Petitioner, the State of Maryland, under *California v. Acevedo*, ____ U.S. ____, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991), it is apparent that the Petitioner neglected to support its bald allegation that, "As *the Maryland Court of Appeals acknowledged, the police had probable cause* to believe Owen's bag contained contraband." Petition for Writ of Certiorari at 19 (emphasis added). The Maryland Court of Appeals made no such conclusion, whatsoever, for the simple reason that the State never elicited evidence to show probable cause and never argued probable cause, at the suppression hearing. (E.32-45). Instead, at that hearing, the State relied solely on the "consent" of the occupant of the apartment to validate the search of the bag. The prosecutor, who declared that he had "address[ed] all the issues," disavowed any "abandonment" argument, and completely omitted any claim of probable cause. (E.35-38). Moreover, that claim, that the police had "probable cause," was never made by the State in its Brief in the intermediate appellate court, the Court of Special Appeals of Maryland. When the Court of Appeals of Maryland granted

Owens' Petition for Writ of Certiorari, the sole question, as presented to that Court by Owens was:

> "Did the trial court err in holding that Petitioner had neither standing to contest a search of, nor a reasonable expectation of privacy in, a piece of luggage he placed in a friend's living room, temporarily?"

The State filed only an "Answer to Petition for Writ of Certiorari," but no conditional cross-petition, and stated the sole question, in this fashion:

> "Did Marla Gardin have the authority to consent to a search of her apartment, including the search of an unlocked bag that Owens left in Gardin's living room for an indefinite period of time?"

The first time the State ever raised the "probable cause" claim was in its Brief in the state's supreme court, the Court of Appeals of Maryland.

It appears that the State's untimely claim of "probable cause" stems from the testimony of a single police officer, at the suppression hearing, that, to gain admittance to the apartment, he "indicated to" the occupant that he "had received information that there were drugs in her apartment that was brought there by four subjects who just arrived there that morning." *Owens v. State*, 322 Md. at 620. For whatever reason, the State never asked the police witness whether or not he had told the woman the truth.[1]

The remaining question posed by the Petitioner is the only one which was timely raised and decided below: the validity of the resident's consent to search luggage which the police believe belongs to a traveler who just arrived at that apartment.

Petitioner, in this Court, seizes upon the mere citation, by the Maryland Court of Appeals, of *Arkansas v. Sanders*, 442 U.S. 753 (1979), since overruled by *California*

---

[1]The curious decision by the State to totally avoid trying to show probable cause, at the suppression hearing, suggests that the police officer may actually have acted on a mere hunch, e.g.: that four black males, arriving in that area of Hagerstown, Maryland, in a car with Florida license plates, may have brought illegal drugs. Stating that hunch as a fact would have been a ruse to elicit some information from the occupant of the apartment. However, the use of such a ruse would not have made, literally, untrue anything that the police officer said, under oath. The conditional reply of the resident confirmed only that persons had arrived. She "pointed to some luggage which was located on the southwest corner of the living room and she stated 'they had just brought it here this morning and *if there's any drugs* it *would be* in there.'" *Owens v. State*, 322 Md. at 621 (emphasis added).

v. Acevedo, ___ U.S. ___, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991), as a supposedly fatal flaw in the decision of that Court, in the case at bar. However, the question in *Acevedo*, as framed by this Court, was:

> "whether the Fourth Amendment requires the police to obtain a warrant to open the sack *in a movable vehicle* simply because they lack probable cause to search the *entire car*." *Acevedo*, 114 L.Ed.2d at 630 (emphasis added).

In *Acevedo*, unlike the case at bar, it was held that the police *"had probable cause* to believe that the paper bag" which Acevedo was seen carrying to a parked car "contained drugs." *Id.*, 114 L.Ed.2d at 626. Overruling "the *Chadwick-Sanders* rule," [2] this Court stated:

> "We conclude that it is better to adopt one clear-cut rule *to govern automobile searches* and eliminate the warrant requirement for closed containers set forth in *Sanders*." *Acevedo*, 114 L.Ed.2d at 633-34 (emphasis added).

In the case at bar, the State presses for a sweeping extension of *Acevedo*, far beyond "automobile searches," to allow warrantless searches of a traveller's closed luggage or other containers, in general.[3]

The law, as it applies to the facts found by the trial judge, (E.47), was discussed by Professor LaFave, in *Search and Seizure* (1987 ed.), §8.3(f) n.87, wherein he quotes with approval from *United States v. Block*, 590 F.2d 535 (4th Cir. 1978), the decision of the Fourth Circuit Court of Appeals holding ineffective the consent by a mother to a search of a trunk in her adult son's room:

> "Common experience of life, clearly a factor in assessing the existence and reasonableness of privacy expectations, surely teaches all of us that the law's 'enclosed spaces' -- mankind's *valises*, *suitcases*, footlockers, strong boxes, etc. -- are frequently the objects of his *highest privacy expectations*, and that the expectations may well be at their *most intense* when such effects are *deposited temporarily or are kept semi-permanently*

---

[2]Referring to *United States v. Chadwick*, 433 U.S. 1 (1977), and *Arkansas v. Sanders*, 442 U.S. 753 (1979).

[3]See *Connecticut v. Mooney*, No. 90-1887, wherein this Court, on October 15, 1991, denied that State's Petition for Writ of Certiorari. The state supreme court had invalidated the warrantless search of a closed, unlocked duffel bag and cardboard box found near where its homeless owner was known to live under a bridge. *Connecticut v. Mooney*, 558 A.2d 145 (Conn. 1991).

> *in public places or in places under the general control of another.* Indeed, to *the sojourner in our midst -- all of us at one time or another* -- the *suitcase* or trunk may well constitute practically the *sole* repository of such expectations of privacy as are had." *Id.* (emphasis added).

See State v. Pinegar, 583 S.W.2d 217 (Mo. App. 1979), wherein the defendant, an adult son, was held to have a protected expectation of privacy in an unlocked footlocker in the room he occasionally used in his parent's home; *State v. Evans*, 372 P.2d 365 (Ha. 1962), wherein a wife could not consent to a search of her husband's cuff link case, in his dresser drawer; *In re Scott K.*, 595 P.2d 105 (Cal. 1979), wherein a father could not consent to the search of a tool box in his son's bedroom, where the "father claimed no interest in the box or its contents;" *United States v. Impink*, 728 F.2d 1228 (9th Cir. 1984), wherein a landlady, who had reserved the right to store her property in the garage and to enter to retrieve it, could not consent to its search; *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964), wherein a desk clerk could not lawfully consent to a search of an absent guest's room.

Of course, the result would be otherwise, as in *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969), if the contents of the item of luggage had been shared by the defendant and the person who consented to a search of the bag. Frazier could not claim a reasonable expectation of privacy for a single "compartment" within the "duffel bag" he shared with his cousin. But in the case at bar, the person who consented to the search of Respondent's luggage admitted that she had no permission to open it, and she expressly disclaimed any interest, whatsoever, in the bag or its contents, when she talked to the detective, before the search. (E.25). The detective was looking for drugs which had, supposedly, "just arrived," (E.23); he was explicitly told, and he obviously believed, that the luggage did not belong to the woman who consented to its search. (E.25). The detective testified that the bag bore the male Respondent's name, on the "name tag," which was on the "outside" of the bag, and that the bag was "closed," when he approached it. (E.28-29). This case is a far cry from the scenario envisioned by the Court of Special Appeals, herein: a "sophisticated

courier" leaves his bag with a "third-party" who, "if accosted," tricks the police into believing that she can "consent" to a search of the bag, whereupon the wily, "sophisticated courier ... has the evidence suppressed, based upon a violation of his ... own expectation of privacy." (E.70). In the case at bar, no one misled the detective, at all, as to the origin or ownership of the bag.

It would be ironic, indeed, if "the sojourner in our midst," *Block*, *supra*, had a protected right of privacy for his luggage inside a hotel room, *Stoner*, or inside a warehouse, *United States v. Piet*, 498 F.2d 178 (7th Cir. 1974), or in the hands of a common carrier, *Corngold v. United States*, 367 F.2d 1 (9th Cir. 1966), or in a hospital room, *Commonwealth v. Silo*, 389 A.2d 62 (1978), or in an airport baggage claim area, *United States v. Fernandez*, 772 F.2d 495 (9th Cir. 1985), but not in a friend's living room.

As Professor LaFave opined, *Search and Seizure*, *supra*, §11.3(f) at 341:

> On occasion courts have had to deal with the question of standing to object to the search of some container, such as a suitcase or briefcase, which is being transported from place to place. The owner of such a container cannot be said to have lost *standing* merely because he is not openly exercising direct control over it at the time of the search.... *So long as there "is no intent to sever all connection with the object being transported,"* the owner of the container may continue to have standing after he has checked it with a transportation company *or put it into the hands of another person*. (emphasis added).

In *Corngold, supra*, customs agents had probable cause to believe that some packages which Corngold left with an airline for shipment contained contraband. The government made "no showing that the packages might be removed before a warrant could be obtained." *Id.*, 367 F.2d at 3. Corngold "was not threatening to remove them, nor was the airline, except under such conditions as the officers saw fit to impose." *Id.* Nevertheless, the officers "opened" the shipment, "found" the contraband, "resealed" the packages, let them be shipped, and "maintained constant surveillance of the packages until they were claimed three weeks later." *Id.* at 2. The federal Circuit Court held that, "The officers had no warrant, and there were no circumstances which might have justified a search without one." *Id.* at 3. "From the

time the appellant left the packages with the carrier in Los Angeles they were subject to the effective control of the customs agents. There was nothing to prevent the agents from securing a warrant on a proper showing either before the packages were shipped from Los Angeles or after they arrived in New York." *Id.* at 3.

In another airport case, *Fernandez*, *supra*, a D.E.A. agent in Miami became suspicious of the defendant and the contents of a piece of black luggage he checked with the airline. *Id.*, 772 F.2d at 496. After the flight arrived in Las Vegas, a trained dog was used to detect narcotics inside the bag, while it was still in the baggage handling area. *Id.* The D.E.A. allowed the suspect to claim the bag, before making the arrest. *Id.* The federal Circuit Court held that Fernandez "had a reasonable expectation of privacy in the suitcase and its contents" and reversed the trial "court's determination that Fernandez lacked standing under the fourth amendment to challenge the search of the black suitcase." *Id.* at 500.

In the case at bar, however, the trial court, as well as the Court of Special Appeals, held that any "gratuitous" bailee of a container may give the police valid consent to search it. *Owens*, 83 Md. App. at 70. (E.45-50, 70). It is that broad rule which the Court of Appeals of Maryland rejected, herein.

That issue was squarely raised in a case strikingly similar to the case at bar, *United States v. Wilson*, 536 F.2d 883 (9th Cir. 1976). In that bank robbery case, Wilson and three codefendants left Los Angeles, the day before the robbery, and spent the "evening" together in the apartment of Sharon McKee, a woman who lived in Oakland. *Id.* at 884. Wilson and one of the codefendants spent that "night" in a motel, leaving their suitcases behind, at the woman's apartment. *Id.* The next morning, at 10:20 a.m., the bank was robbed. *Id.* "By early afternoon," investigators learned that Wilson had spent the "evening" at the woman's apartment. *Id.* At about 3:30 p.m., F.B.I. agents, "with the consent of" the woman "but without a warrant," entered the apartment and found the suitcases. *Id.* The woman "*told the agents that the suitcases were not hers and that they had been left by visitors the night before.*" *Id.* (emphasis

added). The F.B.I. opened the bags, finding evidence the defense wanted suppressed. *Id.* The federal Circuit Court held that:

> Although McKee could effectively consent to the agents' search of her apartment, *she had neither actual nor apparent authority to consent to the suitcase searches*. She disclaimed any ownership of or possessory interest in them. She had neither the "common authority" over nor the "mutual use" of the suitcases that could give constitutional validity to her consent. (*United States v. Matlock*, (1974) 415 U.S. 164, 171 and n.7, 94 S.Ct. 988, 39 L.Ed.2d 242; *see Corngold v. United States* (9th Cir. 1966) 367 F.2d 1, 6-8.) (emphasis added).

In addition to *Wilson*, *supra*, Professor LaFave cites three other gratuitous bailment cases which uphold the owner's reasonable expectation of privacy in a piece of luggage which he entrusted to someone else. In *United States v. Prescott*, 480 F.Supp. 554, 556-57, 560 (W.D.Pa. 1979), the Y.M.C.A. could not lawfully consent to the search of a duffel bag left behind by the defendant, even though the Y.M.C.A. agreed to hold the bag, without compensation, for 60 days after the defendant had been incarcerated and had stopped paying rent. *Id.* at 560. The federal District Court observed:

> "Application of the Fourth Amendment does not turn on the nature of the property interest involved but on the *reasonableness of the expectation of privacy*.
>
> * * *
>
> Although the tenant ... of an apartment may consent to the search of the premises, a consent is insufficient to justify a warrantless search when the searched item is the exclusive property of the guest." *Id.*, 480 F.Supp. at 560. (emphasis added).

See Matter of B.K.C., 413 A.2d 894, 900 (D.C. Cir. 1980), wherein the appellant retained a reasonable expectation of privacy in his briefcase, after he allowed his companion to carry it; *State v. Cooke*, 282 S.E.2d 800, 806-08 (N.C.App. 1981), *aff'd* 291 S.E.2d 618 (N.C.1982), wherein a companion could not consent to the search of Cooke's suitcase, over which he was a gratuitous "bailee to whom Cooke entrusted the safe keeping of his suitcase," *id.* at 807, because "Cooke's *name was on the suitcase*," *id.* at 808, and the companion "had no right to open the suitcase and *knew* he could not give anyone else permission to open it." *Id.* at 807. (emphasis added). Cooke retained "his expectations of privacy in the contents of *his own suitcase*...." *Id.*

(emphasis by the court). *Compare Thompson v. State*, 62 Md. App. 190, 200, 488 A.2d 995 (1985), wherein Thompson had "standing" to contest the search of his briefcase, found under the bed of a friend, in the friend's motel room, however, "the officers had ***no reason to believe*** that the briefcase under the bed was ***the special property of the appellant***, as distinguished from any other closet, drawer, box, suitcase, or purse examined in the course of the larger search" of the friend's motel room. (emphasis added). Unlike *Thompson*, in the case at bar, the detective knew the person consenting to the search was not the owner of the bag. (E.23-39).

The reasonableness of a man's expectation of privacy, while visiting the home of a friend, was recently discussed by this Court, in *Minnesota v. Olson*, 495 U.S. _ __, 109 L.Ed.2d 85 (1990), wherein the police "made a warrantless, nonconsensual entry into a house where Olson was an overnight guest and arrested him," after learning that he was the driver of the getaway car in an armed robbery and was "staying" with two women in their apartment. 109 L.Ed.2d at 91. This Court ruled "that Olson's status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." *Id.* at 93. Rejecting the State's argument that Olson had no expectation of privacy, because he was never "left alone" in the apartment or "given a key," this Court observed:

> "We stay in others' homes when we travel to a strange city for business or pleasure, when we visit our parents, children, or more distant relatives out of town, when we are in between jobs or homes, or when we house-sit for a friend. We will all be hosts and we will all be guests many times in our lives. From either perspective, we think that society recognizes that a houseguest has a legitimate expectation of privacy in his host's home." *Id.* at 94.

Moreover, this Court said,

> "[H]osts will more likely than not respect the privacy interests of their guests, who are entitled to a legitimate expectation of privacy despite the fact that they have no legal interest in the premises and do not have the legal authority to determine who may or may not enter the household." *Id.* at 95.

The result, in the case at bar, is wholly unaffected by this Court's holding in *Rawlings v. Kentucky*, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980), wherein

the defendant not only entrusted his effects to a female companion, but he actually put them into her purse, thereby, surrendering all right to control access to them. *See Frazier, supra*, to the same effect, involving a duffel bag. Nevertheless, the trial court, herein, was "particularly struck by the language in [*Rawlings*] *v. Kentucky* at [100 S.Ct.] page 2561," and felt that Respondent's "legitimate expectation of privacy" depended upon the "area" searched. (E.48). Obviously, it did not.

Finally, it must be noted that the prosecutor, in the instant case, expressly conceded that there was no "issue of abandonment here," (E.36), which concession was completely overlooked by the intermediate appellate court, the Court of Special Appeals, when it maintained that Respondent "relinquished control over his bag," had "no specific plans to recover the bag within a reasonable time," and "never made any effort to recover or make any inquiry in respect to the bag." *Owens*, 83 Md. App. at 369. Herein, the only "abandonment" occurred, when the prosecutor abandoned that issue. *Fernandez, supra* at 499-500; *Cooke, supra* at 806.

The State's position, essentially, is that Respondent would have a more reasonable expectation of privacy in "'a glass telephone booth,'" *Owens*, 83 Md. App. at 364, than in the living room of a friend. *See Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Bradford C. Peabody

Bradford C. Peabody
Assistant Public Defender
Appellate Division
201 Saint Paul Place
Baltimore, Maryland 21202
(301) 333-4829

Counsel for Respondent